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IN THE
COURT OF APPEALS OF INDIANA

RAYMOND S. DUGAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0606-CR-348
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0507-FB-121977

February 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Raymond S. Dugan appeals his conviction of Child Molesting,[1] a class B felony, and the sentence imposed on that conviction. He presents the following issues for review:

1. Was the evidence sufficient to support the conviction?

2. Did the trial court err in imposing the sentence for this conviction consecutive to the sentence for another conviction?

We affirm.

The facts favorable to the conviction are that on Thanksgiving Day in 1995, six-year-old A.W. and her twin brother were visiting Dugan, their biological father.[2] The three had Thanksgiving dinner at the home of Dugan's mother, who was A.W.'s grandmother. Green beans was one of the foods served at the meal. A.W. did not like green beans and refused to eat them. Dugan compelled the child to eat green beans by forcing a spoonful of them into her mouth. A.W. then threw up on herself and Dugan. A.W.'s grandmother cleaned her with a washcloth and the children spent the rest of the day with Dugan at their grandmother's.

When they went to Dugan's home that evening, Dugan put A.W.'s brother to bed and then gave A.W. a bath. He got into the bath with her. When they were finished, Dugan wrapped A.W. in a towel, took her into the living room, and instructed her to sit on the couch. After she complied, Dugan removed his towel and masturbated in front of

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[1] Ind. Code Ann. § 35-42-4-3 (West, PREMISE through 2006 Second Regular Session).

[2] The twins have since been adopted by their mother's second husband.

her until he ejaculated. He told her to taste the ejaculate, which she refused to do. He then grabbed the back of her head and forced his still-erect penis into her mouth. He told her that was her punishment for throwing up on him. After that, he took A.W. back to the bathroom, dressed her, put her to bed, and warned her not to tell anyone what had happened.

In July 2005, A.W. learned that Dugan's fourteen-year-old step-daughter alleged that Dugan had recently molested her. Those allegations resulted in the filing of three charges of sexual misconduct with a minor, two as class B felonies and one as a class C felony. Upon learning that information, A.W. told her mother what Dugan had done to her in 1995, as recounted above. A single charge of child molesting as a class A felony in relation to that incident was added to the three charges stemming from his step-daughter's allegations.

On February 10, 2006, Dugan filed a Motion for Severance of Counts, asking the court to sever the counts relating to the stepdaughter from the count relating to A.W. The trial court granted that motion and the causes were severed for purposes of trial, but remained under the same cause number. On March 23, 2006, Dugan reached a plea agreement with the State concerning the charges relating to his stepdaughter. He agreed to plead guilty to one count of sexual misconduct with a minor in exchange for the State's agreement to drop the remaining two charges. The terms of the plea agreement called for a cap of ten years on the sentence, but otherwise left sentencing to the court's discretion.

On May 18, 2006, the court conducted a sentencing hearing on the guilty plea and imposed a ten-year sentence. Coincidentally, the jury trial on the severed charge – the child molesting charge relating to A.W. – was completed on the same day and resulted in a verdict of guilty of class B-felony child molesting. In this appeal, Dugan challenges the conviction and sentence relative to the severed charge of child molesting as a class B felony, involving A.W. as the victim.

1.

Dugan contends the evidence was not sufficient to support the conviction for class B felony child molesting. Specifically, Dugan challenges A.W.'s credibility in testifying that he molested her.

When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)). The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Pinkston v. State*, 821 N.E.2d 830 (Ind. Ct. App. 2004), *trans. denied*. That principle applies when

that witness is the victim of the child-molesting allegation upon which the testimony centers. *Manuel v. State*, 793 N.E.2d 1215 (Ind. Ct. App. 2003), *trans. denied.*

A.W. testified that Dugan molested her when she was six years old. Dugan, however, seeks a ruling that, by application of the principal of incredible dubiosity, A.W.'s testimony is not worthy of belief. In support of this contention, he claims that her testimony at trial was at odds with previous statements she had given to others regarding the molestation, and was inconsistent with information provided by others. For testimony to be so inherently incredible that it is to be disregarded on this basis, "the witness must present testimony that is inherently contradictory, wholly equivocal or the result of coercion, and there must also be a complete lack of circumstantial evidence of the defendant's guilt." *Clay v. State*, 755 N.E.2d 187, 189 (Ind. 2001).

The inconsistencies cited by Dugan with respect to A.W.'s testimony are: (1) A.W. originally reported that she was four years old at the time of the molestation, but later reported that she was six; (2) A.W. claimed that her mother drove A.W. and her brother to the Thanksgiving meal at Dugan's mother's house on the day in question, but A.W.'s mother testified that Dugan drove them there; (3) A.W. was inconsistent in describing which home Dugan lived in at the time of the molestation; and (4) A.W. initially claimed that Dugan did not tell her not to report the incident to anyone, but later claimed that he did.

The "discrepancies" of which Dugan complains, viewed either individually or in the aggregate, are not so significant as to render A.W.'s testimony incredibly dubious.

For the most part, the complained-of inconsistencies were minor in nature, and do not warrant reversal. *See Holeton v. State*, 853 N.E.2d 539 (Ind. Ct. App. 2006). Considering the amount of time that elapsed between the molestation and the time A.W. reported it, and considering the fact that A.W. was only six years old when it occurred, such discrepancies are understandable. As such, they "were factual issues for the jury to resolve" in deciding the weight and credibility to assign A.W.'s testimony. *Miller v. State*, 770 N.E.2d 763, 775 (Ind. 2002). Moreover, although A.W.'s testimony was inconsistent on some tangential matters, her testimony about what occurred and who molested her is and has been from the beginning consistent and unequivocal. Ultimately, the jury believed A.W.'s claim that Dugan molested her. Therefore, we conclude that A.W.'s testimony, although not perfectly internally consistent, was not fatally inconsistent and thus was sufficient to support the jury's determination that Dugan molested A.W.

2.

Dugan contends the trial court erred in imposing the sentence for the conviction relating to A.W. consecutive to the sentence for the conviction relating to sexual misconduct with Dugan's stepdaughter.

The Indiana Supreme Court has indicated that multiple victims is an aggravating circumstance that supports consecutive sentences, noting that such "seems necessary to vindicate the fact that these were separate harms and separate acts against more than one person." *Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003). *See also Estes v. State*, 827

N.E.2d 27, 29 (Ind. 2005) (defendant "committed the offenses against two victims, so at least one consecutive sentence is appropriate"). In this case, when explaining why it imposed consecutive sentences, the trial court stated, "[t]he Court does believe however that since he has committed crimes against two separate victims, one his own daughter and one his stepdaughter, that each of those victims is entitled to see a separate punishment imposed for them." *Transcript* at 238. We agree. *See Gleaves v. State*, No. 49A02-0604-CR-340, *slip op.* at 8 (Ind. Ct. App. Jan. 11, 2007). The trial court did not err in imposing consecutive sentences.

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.